of the licence is one which in my opinion is completely disposed of by Section 17 of the Land Code. There is a natural tendency on the part of occupiers of premises on a temporary basis for their sense of insecurity to diminish with the passage of time. It is well, therefore, that it should be made clear to those concerned that *temporary* occupation of State land is no more than its name implies.

The appeal is allowed.

Appeal Allowed.

PUBLIC PROSECUTOR v. CHIN KEOW And PUBLIC PROSECUTOR v. FONG TOW YIN.

[App. Crim. Juris. (Spenser-Wilkinson, J.) February 25, 1947]

Land Code, Sections 250, 251 and 252—Summons to show cause why a warrant should not issue commanding the Police forthwith to remove a person in unlawful occupation of State Land—Proceedings in such a case are criminal and not civil proceedings—"Criminal cause or matter"—Appeal lies under Section 307 of the Criminal Procedure Code—Summons under Section 251 of the Land Code is not a suit, action or other proceeding within the meaning of Section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946—Whether reasonable notice to vacate the premises is necessary.

These two appeals raised the same questions of law and were dealt with together. The respondents in each case were in occupation of State Land and were brought before the District Court under Sections 250 and 251 of the Land Code to show cause why a warrant should not be issued under the latter section. In each case the respondent had been issued with a temporary occupation licence during the Japanese occupation, but no such licence had been issued to them in respect of the year 1946. The learned District Judge dismissed the summons in each case upon the ground that the provisions of the Courts (Restriction of Civil Jurisdiction) Ordinance 1946, debarred the Court from entertaining the proceedings. He also expressed the view that an appeal did not lie from his decision. He also held in the first case that the prosecution had not proved service of a notice to the occupier to quit.

Held, (1) that proceedings under Sections 250 and 251 of the Land Code are criminal both in their nature and in their form and that therefore an appeal lies from the District Court in respect of such proceedings under Section 307 of the Criminal Procedure Code;

(2) that the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946 does not apply to criminal proceedings and therefore does not apply to proceedings under Sections 250 and 251 of the Land Code;

(3) that the question whether a notice to quit is necessary in such cases and what length of notice is reasonable is one which depends upon the facts of each case.

Cases referred to:—

(1) *Chew Cheng Swee v. Chan Chye Neo* 1 M.L.J. 5.

(2) *Seaman v. Burley* (1896) 2 Q.B. 344.

(3) *Amand v. Home Secretary and another* (1943) A.C. 147.

(4) *R. v. Appeals Committee* (1946) 1 A.E.R. 129.

(5) *Yeo Peck Chie v. K. S. Gill & Co.* (1946) 12 M.L.J. 131.

(6) *Public Prosecutor v. Yap Tai* (1947) 13 M.L.J. 50.

CRIMINAL SUMMONS APPEAL FROM DISTRICT COURT.

Spenser-Wilkinson, J.: —These two appeals raise the same questions of law and I therefore deal with them together.

The respondents in each case were in occupation of State Land and were brought before the District Court under Sections 250 and 251 of the Land Code to show cause why a warrant should not issue under the latter section. In each case the respondent had been issued with a temporary occupation licence during the Japanese occupation, but no such licence had been issued to them in respect of the year 1946.

The learned District Judge dismissed the summons in each case upon the grounds that the provisions of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, debarred the Court from entertaining the proceedings. He also expressed the view that, on the authority of *Chew Cheng Swee v. Chan Chye Neo*[1], an appeal did not lie from his decision and that the appeal in this case was not in order because the notice of appeal was given by the Deputy Public Prosecutor who was not a party to the proceedings.

The questions whether the Court had jurisdiction and whether an appeal lies in this case both depend ultimately upon whether or not proceedings under Sections 250 and 251 of the Land Code are criminal or civil proceedings. The District Judge quotes *Chew Cheng Swee v. Chan Chye Neo*[1] as authority for the proposition that there is no appeal in law under the Land Code. In that case it was decided that no appeal lay from the decision of a District Court in

the Straits Settlements refusing to vary the amount of maintenance to be paid by a husband to a wife. The decision was based mainly upon a consideration of the English decision in *Seaman v. Burley*[2] upon the question of what is a "criminal cause or matter". I have some doubt as to whether the decision in the local case would be the same now if it were considered afresh in the light of the recent decisions of the Privy Council and the Court of Appeal in England. But in any event it is not an authority upon the question now before me. A proceeding in which the question is how much maintenance is to be paid by one person to another is clearly a different type of proceeding from one in which the question is whether a person is or is not in unlawful possession of State Land.

Apart from authority I would be inclined to think that the proceedings in this case are criminal in their nature. Not only are they commenced by means of an information laid by the Collector of Land Revenue with the view to the issue of a warrant commanding the Police forthwith to remove the offender from the land but they may also result in the punishment of the defendant under Section 252 of the Land Code. This is so even if (as in this case) the Collector does not seek to invoke section 252 because under the provisions of the Criminal Procedure Code the Court would have power during the proceedings to add a charge under Section 252 and punish the defendant thereon. Indeed, in a proper case I think it would be the duty of the Court to do so. The defendant is thus in jeopardy as soon as proceedings under Section 250 are commenced.

This view is supported by the English authorities. In *Amand v. Home Secretary and another*[3] it was laid down that if a cause or matter is one which, carried to its conclusion, *might* result in the conviction of the person charged and in a sentence of some punishment it is a "criminal cause or matter" In the case of *R. v. Appeals Committee*[4] after reviewing all the authorities, including the case just quoted and the decisions of the Irish Courts, the judgment of the Court of Appeal proceeds as follows—"The English cases show that the form of the proceedings is the test....".

In my opinion proceedings under Sections 250 and 251 of the Land Code are criminal both in their nature and in their form. It follows that an appeal lies from the District Court in respect of such proceedings under Section 307 of the Criminal Procedure Code.

I will next deal with the form of the appeal in this case. I think it would have been better if the notice of appeal had been signed both by the Collector of Land Revenue and the Deputy Public Prosecutor, as was done in the case of the petition of appeal. I do not think, however, that the appeal in this case is irregular because under the provisions of Section 376 of the Criminal Procedure Code the Public Prosecutor has the control and direction of all criminal proceedings. I think he must be deemed therefore to be a party to all such proceedings for the purposes of Section 307.

I come now to the main grounds of decision of the learned District Judge. In his view a summons under Section 251 of the Land Code is a suit, action or other proceeding within the meaning of Section 3 of Ordinance No. 15 of 1946. I am unable to agree with this view. The words "suit" and "action" seem to me to connote civil proceedings. They are words not usually used to describe criminal proceedings. I would be inclined, therefore, to construe the words "other proceeding whatever" in the context as referring to all other *civil* proceedings whatever, particularly in view of the kind of proceedings enumerated in paragraphs (a) to (e) of the Section. Fortunately, one is assisted in the construction of this section by both the long and the short titles of the Ordinance. Both refer specifically to the civil jurisdiction of the Courts and therefore looking at the Ordinance as a whole I have no doubt that its intention is to restrict only civil proceedings of the nature set out in Section 3. In my opinion the Ordinance does not apply to criminal proceedings and therefore does not apply to proceedings under Sections 250 and 251 of the Land Code, which I have held to be criminal proceedings.

It thus becomes unnecessary for me to decide whether the District Judge was right in holding that the proceedings in question here concerned a dealing in land. I would observe, however, that there is a wide difference between proceedings which are founded upon a subsisting agreement relating to land, as was the case in *Yeo Peck Chie v. K. S. Gill & Co.*[5] and proceedings the foundation of which is that the respondent has no title to the land whatever, as is the case here. It appears, moreover, from the suggestion made by the District Judge that a licence might be of indefinite duration that he overlooked the provisions of Rule 40 of the Land Rules, 1930, which provides that all temporary occupation licences shall expire on the

31st December of each year. If the occupiers in these cases had acquired any right to be on the land in the manner suggested in the penultimate paragraph of the judgment in *Public Prosecutor v. Yap Tai*[6] such rights would rest not so much upon the document issued by the Japanese as upon long occupation coupled with acquiescence in the peculiar circumstances of the year 1946.

There remains one point which arose only in Criminal Appeal No. 5 of 1947. In this case the notice to vacate the premises was served upon a male Chinese, who signed the acknowledgment, whereas the respondent is a female. The District Judge, purporting to follow the decision of this Court in the case just quoted, held that notice to the occupier to vacate was necessary and that the prosecution had not proved service of such a notice. But in *Public Prosecutor v. Yap Tai* the question whether occupation in similar circumstances was unlawful before the date of expiration of a notice to vacate was expressly reserved, although the opinion was expressed that the occupant who had built some kind of dwelling-house on the land would *probably* be entitled to reasonable notice to remove it. The question whether notice is necessary and what length of notice is reasonable is one which depends upon the facts of each case.

The respondent in this case has denied that the notice was served upon her. She has not denied that the contents of the notice was brought to her knowledge. It was argued before me that the service in this case upon some other occupant of the premises who accepted service was sufficient. The facts recorded upon this point are, however, so scanty that I felt it would be inadvisable for me to decide this point without having further facts before me. I therefore directed that the case be remitted to a District Judge under Section 317 of the Criminal Procedure Code to take further evidence upon the question of service. In view of the fact, however, that the respondent is likely to leave the land in question voluntarily, the taking of such further evidence may become unnecessary, and I therefore directed that it be taken only if the Collector of Land Revenue applies for this to be done.

In Criminal Appeal No. 6 in view of the fact that the respondent in this case also has either left or is in process of leaving the land in question I directed that the appropriate warrant be issued only if the Collector of Land Revenue finds it necessary to apply for its issue.

Appeals Allowed.